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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/500,867

07/21/2004

Masahide Ishikawa

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23850 7590 03/15/2010
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EXAMINER

NERANGIS, VICKEY MARIE

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

03/15/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. All outstanding rejections, except for those maintained below, are withdrawn in light of applicant's amendment filed on 11/16/2009.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.
3. No new grounds of rejection are set forth below. Thus, the following action is properly made final.

Claim Rejections - 35 USC § 103

4. Claims 9, 12, and 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi '615 (US 6,238,615) in view of Kobayashi '863 (US 5,120,863).

The rejection is adequately set forth in paragraph 5 of Office action mailed on 7/23/2009 and is incorporated here by reference.

5. Claims 9, 12, and 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '851 (WO 98/33851) in view of Kobayashi '863 (US 5,120,863).

The rejection is adequately set forth in paragraph 6 of Office action mailed on 7/23/2009 and is incorporated here by reference.

6. Claims 9-12 and 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '851 (WO 98/33851) in view of Kobayashi '843 (US 6,245,843).

The rejection is adequately set forth in paragraph 7 of Office action mailed on 7/23/2009 and is incorporated here by reference.

Response to Arguments

Applicant's arguments filed 11/16/2009 have been fully considered but they are not persuasive. Specifically, applicant argues that the combination of (B) and (C) like claimed provides for unexpected results.

In response, that data has been fully considered, however, it is insufficient to establish unexpected results because the data is not reasonably commensurate in scope with the scope of the claims. Case law holds that evidence is insufficient to rebut a *prima facie* case if not commensurate in scope with the claimed invention. *In re Grasselli*, 713 F.2d 731, 741, 218 USPQ 769, 777 (Fed. Cir. 1983). Specifically, aliphatic alcohols having 12 and 18 carbon atoms is not reasonably commensurate in scope with claimed C₆-C₃₂ aliphatic alcohol and 12-hydroxystearic acid is not reasonably commensurate in scope with claimed C₈-C₃₂ hydroxycarboxylic acid (B2). Similarly, the exemplified sulfates (C1) and amines (C3) are not reasonably commensurate in scope with what is claimed. Furthermore, the relative amounts of (B) and (C) are not reasonably commensurate in scope given that they are only 2.5 wt % for each and in a 1:1 ratio. Case law holds that whether the unexpected results are the result of unexpectedly improved results or a property not taught by the prior art, the "objective evidence of nonobviousness must be commensurate in scope with the claims which the evidence is offered to support." In other words, the showing of unexpected results must be reviewed to see if the

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results occur over the entire claimed range (i.e., scope). *In re Clemens*, 622 F.2d 1029, 1036, 206 USPQ 289, 296 (CCPA 1980), MPEP 716.02(d).

Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vickey Nerangis whose telephone number is (571) 272-2701.

The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

vn

/Vickey Nerangis/
Primary Examiner, Art Unit 1796